HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

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Writ Appeal No.1147 of 2006

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Between:

J.Ramanand

……Appellant

And

Sagar Cooperative Housing Society Limited,
(T.A No.169), 5-4-10, Jawaharlal Nehru Road,
Hyderabad, represented by its President
B.Ramachandra Rao and two others. **……Respondents**

:: J U D G M E N T ::

Counsel for the Appellant : Shri Challa Seetharamiah,
Senior Advocate, assisted by
Shri P.Harinath Gupta

Counsel for Respondent No.1 : Shri M.R.K.Chowdary,
Senior Advocate, assisted by
Shri M.Sudheer Kumar.

November 06, 2006

Per G.S. SINGHVI, C.J.

Whether Deputy Registrar of Co-operative Societies (Housing), Hyderabad (respondent No.2) could, without there being any reference of the dispute in terms of Section 61 of the Andhra Pradesh Co-operative Societies Act, 1964 (for short, 'the Act'), and only on the basis of some correspondence with the advocate for the appellant and Sagar Co-operative Housing Society Limited, Hyderabad (respondent No.1 herein), nullify the allotment of Plot No.83 made in favour of Ananta Koti Raju (respondent No.3 herein) and restore the registration of the plot in favour of the appellant is the question, which arises for determination in this appeal filed under Clause 15 of the Letters Patent for setting aside order dated 29-9-2006 passed by the learned Single Judge in Writ Petition No.19249 of 1999.

Respondent No.1 society purchased some parcels of land for the purpose of allotting the same to its members. After getting the layout prepared and approved, respondent No.1 allotted Plot No.83 measuring 648 square yards to the appellant, which was registered on 3-10-1991. After three years and two months, the managing committee of respondent No.1 passed a resolution dated 17-12-1994 for cancellation of the allotment made in favour of the appellant on the ground of non-availability of the plot as per the revised layout. The appellant protested against the same and sent letter dated 4-2-1995 to respondent No.2 seeking his intervention. After about three years, Sri Ch. Raghuveer Reddy, Advocate acting on behalf of Sri Ch.Venugopal, the alleged General Power of Attorney holder of the appellant, sent a notice dated

9-1-1998 under Section 126 of the Act proposing to file civil suit for

quashing sale deed dated 12-7-1996 and cancellation deed dated 12-9-1996. After one year and seven months, respondent No.2 sent notice dated 8-4-1999 to respondent No.1 and called upon its President to submit explanation in the matter of the society's failure to reserve a plot in lieu of Plot No.83 and of causing loss to Sri Ch. Venugopal and the appellant. The President of the society sent a detailed reply dated 8-7-1999 in which, he not only questioned the authority of respondent No.2 to issue notice dated 8-4-1999 and pointed out that the provision under which the notice has been issued has not been specified, but also clarified the entire matter by making the following assertions:

1) that Plot No.83 was allotted to J.Ramanand, the then Collector, Hyderabad in the year 1982 and was registered in 1991 though the same did not exist on the ground on the date of registration i.e., 3-10-1991;
2) that J.Ramanand did not pay the price of the plot between 1982 and 1991;
3) that in the meanwhile, a dispute cropped up with the adjacent land-owner and in order to settle the same, the society was forced to revise the layout to accommodate the allottees who had already paid the total cost and betterment charges. Accordingly, revised layout was got prepared in the year 1987. The plotted areas for which payments have not been received were shown as open spaces in the layout. This included Plot No.83;
4) that in the meanwhile, elections were conducted and using his official position, J.Ramanand prevailed upon the newly elected managing committee and got the plot registered by paying the cost despite the fact that in the revised layout Plot

No.83 was shown as open space. Later on, the society informed J.Ramanand that Plot No.83 was not existing in the revised layout and offered him alternative plot or to refund the price with betterment charges paid by him;

5) that in the meanwhile, J.Ramanand filed O.S.No.564 of 1995 in the Court of VII Assistant Judge, City Civil Court, Hyderabad and obtained ex parte injunction without making the society a party. He filed another suit for declaration and injunction in the Court of V Senior Civil Judge, City Civil Court, Hyderabad, which was registered as O.S.No.233 of 1998. The injunction application filed in the second case was dismissed by the trial Court and CMA.No.1029 of 1998 filed by him is pending before the High Court;

6) that Ch.Venugopal is not a member of the society and his name does not exist in the records of the society;

7) that the claim of Ch.Venugopal that he paid the price of the plot on behalf of J.Ramanand is false;

8) that no cognizance ought to have been taken on the complaint made by Ch.Venugopal; and

9) that J.Ramanand has not taken back the amount deposited by him towards the price and betterment charges.

Along with reply, the President of respondent No.1 society enclosed the following documents:

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1. Photostat copy of O.S.No.233 of 1998 filed by Sri J.Ramanand, S/o. J.Venkateswar Rao before V Senior Civil Judge, City Civil Court, Hyderabad against the Sagar Co-operative Housing Society & others.
2. Photostat copy of written statement filed by Sagar Co-operative Housing Society in O.S.No.233 of 1998

before V Senior Civil Judge, City Civil Court, Hyderabad, dated 29-6-1998.

3. Photostat copy of injunction petition and order passed vide I.A.No.296/1998 in O.S.No.233/1998, dt.27-4-1998 filed by Sri J.Ramanand against the Sagar Co-operative Housing Society and others.
4. Photostat copy of plaint filed in O.S.No.564/1995 in VII Assistant Judge, City Civil Court, Hyderabad by Sri J.Ramanand, S/o.Sri J.Venkateswarlu against Sri B. Ramachander Rao, S/o. late B.Govind Rao.
5. Photostat copy of order of VII Junior Civil Judge, City Civil Court, Hyderabad in I.A.No.376 of 1998 in O.S.No.564 of 1995, dt.23-4-1998 filed by the Sagar Co-operative Housing Society against Sri J.Ramanand. "

Thereafter, respondent No.2 passed order dated 28-8-1999 whereby he declared resolution dated 17-12-1994 passed by the managing committee of the society as nullity and restored the registration of Plot No.83 in favour of the appellant. Respondent No.2 observed that the action of the society to show Plot No.83 as open area in the revised layout without accommodating the plot in an alternative area is against the spirit of the Act and the bye-laws of the society and the same appears to be mischievous and intended to defraud the members. He further observed that Plot No.83 was subsequently registered in the name of Ananta Koti Raju and the said action of the society was null and void.

Respondent No.1 challenged the aforementioned order in Writ Petition No.19249 of 1999. In the affidavit filed in support of the writ petition, it was pleaded that in the absence of any dispute having been referred under Section 61 of the Act, respondent No.2 could not have suo motu assumed jurisdiction and adjudicated on the legality of

resolution dated 17-12-1994. It was further pleaded that Ch.Venugopal, the alleged General Power of Attorney holder of J.Ramanand did not have any locus to seek nullification of the resolution passed by the society.

In the counter affidavit filed by him, respondent No.2 justified his decision to cancel resolution dated 17-12-1994 by asserting that the decision of the society was contrary to the provisions of the Act and the rules of natural justice. Ch. Venugopal filed counter affidavit dated 26-10-1999 and additional counter some time in December, 1999. J. Ramanand filed another counter affidavit dated 18-11-2002. They took up the position that the action of the society to cancel the allotment made in favour of J. Raman and was illegal and malicious; that the pendency of the civil suit was no bar to the entertaining of representations made to respondent No.2 against the arbitrary action of the society, and that letter dated 4-2-1995 was sent for seeking intervention of the concerned authority under Section 61 of the Act.

The learned Single Judge framed the following questions:

> " 1) Whether any dispute, as required under law, i.e. Section 61 of the Act, was raised before the 1st respondent and whether the 1st respondent was right in taking up the correspondence of the society through its letters dated 27-3-1995 and 8-7-1999 and passing the impugned order. Even in the absence of any such indication that this is a dispute raised under Section 61 of the Act, in the facts and circumstances of the case, whether it could be treated as a dispute under Section 61 of the Act?
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> 2) Whether the rule of 'feeding the grant by estoppel' is applicable in a case of this nature?
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> 3) Whether by applying the doctrine 'justice, equity and good conscience' as contemplated under Rule 49 of the Rules, the action of the 1st respondent in passing the

impugned order can be justified?"

The learned Single Judge then referred to Section 61 of the Act and Rules 48 and 49 of the Act and held that in the absence of a dispute having been referred to him in writing in terms of Section 61 read with Rule 49(1) and without issuing notice to the interested parties and recording their evidence, respondent No.2 could not have, simply by taking cognizance of the letters sent by the General Power of Attorney holder of J.Ramanand, quashed resolution dated 17-12-1994. The learned Single Judge also noted that sale deed dated 3-10-1991 was never released in favour of J.Ramanand and held that after dismissal of the suits filed by him, he was not entitled to claim possession.

Sri Challa Seetharamaiah, learned Senior Counsel appearing for the appellant assailed the impugned order and argued that the learned Single Judge committed a serious error by presuming that the controversy relating to cancellation of the allotment made in favour of the appellant could be made subject matter of civil dispute. He then argued that even though notice dated 8-4-1999 issued by respondent No.2 to the society does not contain a reference under Section 61, the learned Single Judge ought to have taken a holistic view of the entire record and held that what was decided by the officer concerned was a dispute touching the business and management of the society. Learned Senior Counsel emphasized that the appellant had been defrauded by the society inasmuch as the allotment made in his favour was cancelled after more than three years of the registration of the sale deed, which was preceded by payment of full price and betterment charges. He submitted that if the plot was not available as per the revised layout of 1987, then there was no occasion for the society to get the same registered in the name of the appellant or allot the same

to respondent No.3 Anantha Koti Raju.

In our opinion, there is no merit in either of the arguments of the learned counsel. Section 61 of the Act, Rule 48 (minus the Table appended below it) and Rule 49(1) to (5), which have bearing on the decision of the appeal read as under:

> "**61. Disputes which may be referred to the Registrar:--**
> 1) Notwithstanding anything in any law for the time being in force, if any dispute touching the constitution, management or the business of a society, other than a dispute regarding disciplinary action taken by the society or its committee against a paid employee of the society, arises—
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> a) among members, past members and persons claiming through members, past members and deceased members; or
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> b) between a member, past member or person claiming through a member, past member or deceased member and the society, its committee or any officer, agent or employee of the society; or
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> c) between the society or its committee, and any past committee, any officer, agent or employee or any past officer, past agent or a past employee or the nominee, heir or legal representative of any deceased officer, deceased agent or deceased employee of the society;
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> d) between the society and any other society;
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> such dispute shall be referred to the Registrar for decision.
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> **Explanation:--** For the purposes of this sub-section a dispute shall include—
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> i) a claim by a society for any debt or other amount due to it from a member, past member, the nominee, heir or legal representative of a deceased member, whether such debt or other amount be admitted or not;
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> ii) a claim by surety against the principal debtor where the society has recovered from the surety amount in respect of any debt or other amount due to it from the principal debtor as a result of the default of the principal

debtor whether such debt or other amount due to be admitted or not;

iii) a claim by a society against a member, past member or the nominee, heir or legal representative of a deceased member for the delivery of possession to the society of land or other immovable property resumed by it for breach of the conditions of assignment or allotment of such land or other immovable property.

2) If any question arises whether a dispute referred to the Registrar under this Section is a dispute touching the constitution, management or the business of a society, such question shall be decided by the Registrar.

3) …

4) …

48. Fees payable to the Government for service rendered to Siociety/Person:-

Every society/person, as the case may be, shall pay the fees mentioned in the Table below in the nearest Government Treasury for the services rendered to it/him in respect of various services under the Act and the Rules.

Table……

49. Procedure for arbitration and settlement of disputes:-

(1) A reference to the Registrar of any dispute under Section 61 of the Act shall be in writing;

(2) The period of limitation for referring a dispute touching the constitution, management or the business of a society to the Registrar under sub-section (1) of Section 61 of the Act shall be regulated by the provisions of the Limitation Act, 1963 as if the dispute is a suit and the Registrar, a civil Court :

Provided that a dispute arising between the parties mentioned in clause (a) of sub-section (1) of Section 61, shall, where the dispute relates to any act or omission on the part of the Society or its committee, or any past committee, any past officer, past agent or past employee, or the nominee, heirs or legal representatives of any deceased officer, deceased agent

or deceased employee of the society be referred to the Registrar within six years from the date on which the act or omission with reference to which the dispute arose, had occurred.

(3) Where, on receipt of the reference of a dispute under sub-rule (1), the Registrar decides, under clause (c) of sub-section (1) of Section 62 of the Act, to refer it for disposal by an arbitrator, the reference shall be sent by Registrar to an arbitrator appointed by him in this behalf.

(4) The Registrar, the arbitrator or other person deciding the dispute shall record a brief note of the evidence of the parties and witnesses who attended and upon the evidence so recorded, and after consideration of any documentary evidence produced by the parties, shall pass a decision in accordance with justice, equity and good conscience, and such decision given shall be in writing. In the absence of any party duly summoned to attend, the dispute may be decided ex-parte.

5(a) A person referring a dispute under sub-sec.(1) of Section 61 of the Act or preferring an appeal under sub-section (1) of Section 76 of the Act, shall deposit in advance the fees mentioned in Rule 48 for deciding the dispute or an appeal, as the case may be.

(b) The Registrar, arbitrator or other person deciding a dispute under sub-section (4) of Section 62 of the Act and the Tribunal deciding an appeal under sub-section (1) of Section 76 of the Act shall have power to order the costs incurred in determining such dispute or appeal to be paid either out of the funds of the society by such party or parties to the dispute or appeal as he or it may think fit.

(c) The Registrar or the Tribunal may in his or its own discretion remit the whole or any part of the fees deposited under Clause (a)."

A conjoint reading of the provisions reproduced above makes it clear that any dispute touching the constitution, management or business of a society, except the one relating to disciplinary action taken by the society or its committee against a paid employee, is

required to be made in writing. The person referring the dispute is required to deposit, in advance, the fee specified in the Table appended to Rule 48. It is only after receipt of the reference of the dispute that the Registrar (the term includes the Deputy Registrar) can decide the dispute. The Registrar is required to issue notice to the interested persons and record a brief note of the evidence of the parties and the witnesses produced by them. It is, thus, evident that in the absence of a duly made reference, the Registrar/ Deputy Registrar does not get the jurisdiction to decide the disputes enumerated in Section 61.

The facts brought on the record of this case clearly show that the appellant did not apply for reference of the dispute. He appears to have sent communication dated 4-2-1995 to respondent No.2 complaining against the cancellation of the registration of Plot No.83. On receipt of his letter, Sub-Registrar of Co-operative Societies in the office of the Deputy Registrar sent letter dated 20-2-1995 to the society seeking the latter's clarification. To this, reply dated 27-3-1995 was sent by the President of the society. For the next three years, nothing appears to have been done by the appellant apparently because he had entered into some transaction with his General Power of Attorney, Ch. Venugopal. The latter sent notice dated 9-1-1998 under Section 126 of the Act. After another one year, respondent No.2 appears to have privately received papers of the civil suit i.e., O.S.No.564 of 1995 filed in the Court of VII Assistant Judge, City Civil Court, Hyderabad, and sent letter dated 8-4-1999 to the President of the society requiring him to submit explanation. The relevant extracts of that letter, which have also been reproduced in the order under challenge, read as under:

"In the General Body meeting of the Society held on

22-1-1995, it was decided to cancel the said plot after verification of records in Registrar Office. The Society has allotted plot in the year 1982 and in the year 1987 the M.C.H. has approved the revised layout. The Society failed to reserve a plot in lieu of plot No.83 which was already allotted in the year 1982. The Society also failed to verify the allotment of plots with reference to revised layout and registered the plot No.83 in favour of Sri J.Ramanand though the plot was not in existence. The President of the Society, in his letter dt.27-3-1995, has stated that Sri J.Ramanand did not pay the sale consideration of the plot up to 1991 even after issue of repeated reminder.

Sri Ch.Venugopal, in his letter dt.22-3-1999 and also in his affidavit filed before the VII Assistant Judge, City Civil Court, Hyderabad in O.S.No.564 of 1995, has stated that the plot No.83 allotted to Sri J. Ramanand in the year 1982 and for want of money as demanded by the Society over and above the amount mentioned in the document, Sri Ch. Venugopal has come into reserve and paid the entire consideration and requested the Society to refund the money to Sri J.Ramanand to the extent he paid for the plot and register the plot in his favour. The Society, instead of registering the plot in his favour, has registered the plot No.83 in favour of Sri J.Ramanand who has taken back his amount paid to the Society towards the cost of the plot. Sri Venugopal also represented that the President of the Society received the registered documents and in the circumstances he obtained G.P.A. from Sri J.Ramanand to have the legal right over the plot.

The Society collected the entire sale consideration of plot No.83 from Sri Ch.Venugopal and registered the plot in favour of Sri J.Ramanand in the year 1991 though the plot No.83 is not existing in the revised layout sanctioned by the M.C.H. in the year 1987. The Society also failed to allot alternate plot to Sri Ch.Venugopal and caused loss to Sri Ch.Venugopal and dragged Sri J.Ramanand into the disputes."

The aforementioned notice did not contain any indication of an

application having been made by the appellant or his Power of Attorney holder for reference of the dispute. Respondent No.2 also did not indicate to the society that he has received the dispute referred at the instance of the appellant or his Power of Attorney holder and there was a proposal to cancel resolution dated 17-12-1994. Therefore, the functionaries of the society did not have any inkling that any dispute had been raised by the appellant or his Power of Attorney holder in writing or that he had submitted an application in writing for reference of the dispute as per the requirement of Rules 48 and 49(1) of the Rules and respondent No.2 was seeking to decide the dispute. Notwithstanding this, respondent No.2, after making a brief reference to the correspondence of the society, cancelled the resolution.

In our considered view, order dated 28-8-1999 passed by respondent No.2 cannot be treated as a decision of the dispute referred to him in accordance with Section 61 of the Act read with Rules 48 and 49(1) of the Rules. No other provision has been brought to our notice under which respondent No.2 could suo motu take cognizance of the complaint made by an aggrieved person and cancel the resolution passed by the society. Therefore, it must be held that respondent No.2 did not have power, jurisdiction or authority to pass order dated 28-8-1999 and the learned Single Judge did not commit any error by quashing the same.

Before concluding, we consider it necessary to mention that on receipt of notice dated 8-1-1998 sent by the advocate of Ch.Venugopal or at any time thereafter, respondent No.2 do not appear to have issued notice to respondent No.3 proposing cancellation of the allotment made in his favour. Learned Senior Counsel appearing for the appellant fairly conceded that no such notice was issued by respondent No.2. Therefore, it is reasonable to take a view that the

order passed by respondent No.2 is also vitiated due to violation of basic rule of natural justice i.e., audi alteram partem.

No other point has been argued.

In the result, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP.Nos.2400 and 2404 of 2006 filed by the appellant for interim relief are also dismissed.

G.S.SINGHVI, C.J.

6th November, 2006.

C.V.NAGARJUNA REDDY, J.

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